

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *AC* D.C.

05 OCT 17 PM 5:08

**SYMANTHIA COOPER,**

**Plaintiff,**

**vs.**

MEMPHIS AREA MEDICAL CENTER FOR  
WOMEN and BARBARA WOTHERSPOON,  
M.D., individually,

**Defendants.**

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TENNESSEE

**No. 04-2806 MaV**

ORDER GRANTING PLAINTIFF'S MOTION TO RECONSIDER AND GRANTING  
PLAINTIFF ADDITIONAL TIME TO RESPOND TO THE MOTION OF DEFENDANT  
BARBARA WOTHERSPOON

Before the court is the October 11, 2005 motion of the plaintiff, Symanthia Cooper, to reconsider the court's October 6, 2005 order. In that order, the court granted the two separately filed motions of the defendants to strike plaintiff's supplemental expert disclosures, due to Cooper's failure to file a response.

In the motion currently before the court, Cooper states that on September 26, 2005 she submitted a timely response in opposition to the motion of Defendant Memphis Area Medical Center. Cooper submitted with her motion a United States Postal Service tracking receipt, indicating that a package was sent to the Clerk of Court via Express Mail on that date. To this day, no response has ever

been docketed on the docket sheet by the Clerk of Court.<sup>1</sup> In addition, Cooper states that she was never served with a copy of Defendant Barbara Wotherspoon's motion, and therefore no response to that motion was due.

Wotherspoon filed a response to Cooper's motion for reconsideration, in which she admits that Cooper was not served with a copy of her motion to strike plaintiff's supplemental expert disclosures. Wotherspoon states that she corrected the error by mailing a copy of the motion to Cooper's counsel on October 14, 2005. Wotherspoon asks the court to provide Cooper with additional time to file a response to her motion.

Rule 60(b) of the Federal Rules of Civil Procedure permits a court, on motion and upon such terms are just, to relieve a party from a court order for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). It appears to this court that Cooper attempted to timely file her response to Defendant Memphis Area Medical Center's motion to strike plaintiff's supplemental expert disclosures and, by some mistake, the court did not receive such response. As a result, Cooper's motion to reconsider is granted.

In addition, it appears to this court that Defendant Barbara

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<sup>1</sup> An amended complaint filed by the plaintiff was docketed by the Clerk on September 28, 2005.

Wotherspoon mistakenly or inadvertently failed to serve Cooper with a copy of its motion to strike plaintiff's supplemental expert disclosures. As a result, this court will grant Cooper additional time to file a response to such motion. Cooper must file a response no later than October 25, 2005. At that time, the court will reconsider its October 6, 2005 order based on the pleadings of all parties.

IT IS SO ORDERED this 14th day of October, 2005.

A handwritten signature in cursive script, reading "Diane K. Vesco", written in dark ink.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE



## Notice of Distribution

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Brian H. Neely  
LAW OFFICE OF BRIAN H. NEELY  
P.O. Box 1032  
Tupelo, MS 38802

Melanie R. Dunlap  
HARRIS SHELTON DUNLAP COBB & RYDER  
2700 One Commerce Square  
Memphis, TN 38013

William W. Housley  
LAW OFFICE OF WILLIAM W. HOUSLEY, JR  
110 Robins St.  
Tupelo, MS 38804

Jeffrey L. Griffin  
HARRIS SHELTON DUNLAP COBB & RYDER  
One Commerce Square  
Ste. 2700  
Memphis, TN 38103

James T. McColgan  
LAW OFFICE OF JAMES T. MCCOLGAN & ASSOCIATES, PLLC  
1661 International Dr.  
Ste. 400  
Memphis, TN 38120

James L. Kirby  
HARRIS SHELTON DUNLAP COBB & RYDER  
One Commerce Square  
Ste. 2700  
Memphis, TN 38103

Honorable Samuel Mays  
US DISTRICT COURT